

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

DHM,	)	
	)	
Plaintiff,	)	Civil Case No. 06-143-KI
	)	
vs.	)	OPINION AND ORDER
	)	
OREGON YOUTH AUTHORITY, a sub-	)	
division of the State of Oregon, GARY	)	
LAWHEAD, in his individual capacity,	)	
HAVAN JONES, in his individual capacity,	)	
JOHN POWELL, in his individual capacity,	)	
and FLOYD MESTETH,	)	
	)	
Defendants.	)	
_____	)	

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KING, Judge:

Several motions are before the court.

At oral argument, DHM conceded Lawhead, Powell, and Jones' Motion for Additional Consideration Based upon New Authorities (#330) and Mesteth's Motion for Additional Consideration (#332). Thus, I grant the motions and dismiss with prejudice all claims alleged against Lawhead, Powell, Jones, and Mesteth.

DHM also filed a Motion for Reconsideration of April 9, 2008 Opinion and Order (#337). As requested by DHM, I carefully reviewed Phillips v. Multnomah County, Civ. No. 05-105-CL (D. Or. Mar. 23, 2007) and Matlock v. United States of America, Civ. No. 06-768-KI (D. Or. Sept. 21, 2007). I am unpersuaded, however, that my rulings concerning relation back are incorrect in light of Phillips and Matlock. Phillips concerns whether to apply the state or federal rule. Under my rulings, the result is the same with either version. Matlock concerns relation back when plaintiff named the Bureau of Prison instead of the United States. That is a different situation than the one before me in which DHM named neither correctly named individual

defendants nor John Does on Complaint-Mult, even though he included some allegations about his supervisors' knowledge of Boyles' conduct. I remain convinced that under both the federal rule, as discussed in Louisiana-Pacific Corp. v. Asarco, Inc., 5 F.3d 431 (9th Cir. 1993), and the state rule, as discussed in Krauel v. Bykers Corp., 173 Or. App. 336, 21 P.3d 1124 (2001), the relation back doctrine should not be applied because DHM did not make a mistake as interpreted by those courts. Consequently, I deny DHM's Motion for Reconsideration of April 9, 2008 Opinion and Order (#337).

Finally, I see no reason to have either the Oregon Supreme Court or the Ninth Circuit address my rulings while we delay proceeding to trial. Thus, I deny Plaintiff's Motion to Certify State Law Questions to Oregon Supreme Court (#334) and Plaintiff's Motion for Certification as Interlocutory Appeal (#336).

IT IS SO ORDERED.

Dated this 8th day of July, 2008.

/s/ Garr M. King  
Garr M. King  
United States District Judge